



OPRA Challenges & Opportunities for Custodians: Police Records Issues

Presented by the Government Records Council

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General Principles

- Obligation is to fulfill requests
- Watch nomenclature – PD's use different names for different reports
- Determine what record contains the information being requested
- OPRA can be overruled by common law or discovery in litigation.

Investigations Generally

- Investigation direction: N.J.S.A 47:1A-3
 - 3a – Investigations generally
 - 3b – Criminal Investigation (old EO #69)

General practice:

- Determine if record is disclosable (i.e., does not include criminal investigatory records)
- Are there redactions (DL, SS#, credit cards, unlisted phone, DV, health related)?

“3a” – Investigation Records

- Records pertaining to an investigation in progress by any public agency (Criminal is 3b)
- Access may be denied if inimical to public interest...
- ...Except if access to a record was allowed prior to investigation.
- If another agency obtains records from another agency that has a request for records, the agency with the records must provide them

3b - Criminal Information

- Criminal incident: "3b" disclosure (EO #69) is required
- Criminal investigatory records: records not required to be kept are confidential
- Once a criminal investigation, may always be considered that way
- Arrest warrants and summonses disclosable with appropriate redactions
- Related papers are not: IR's, field reports, supplementals, statements.

What Does 3b Require?

- Criminal investigation information must be made available within 24 or ASAP of a request of a crime taking place
- If a crime was reported but no arrest made: report the type, time, location and weapon
- If an arrest was made, provide:
 - **Victim info: name address age, Unless next of kin has not been notified or release is contrary to law or court rule**
 - **Unless integrity of investigation, or safety of victim or family would be threatened**

3b Also Requires...

- Unless contrary to law or court rule, provide:
 - Defendant name, age, residence, occupation, marital and similar background
 - Identity of complaining party
 - Text of charges, complaint, or indictment, unless sealed
- Identity of:
 - Investigating and arresting personnel
 - Law enforcement agency
 - Length of investigation
- Bail, if posted and amount

3b Disclosures Are Not Made

- If release of information will jeopardize safety of a person, an investigation, or may be inappropriate to release,
- But, not releasing is narrowly construed to prevent disclosure of information harmful to law enforcement purpose or public safety.
- When exception is used, official shall issue a statement explaining the decision.

Event and “Blotters”

- 3a Exception: “all other investigations:” disclosable unless “inimical to the public interest”
- Records available prior to investigation continue to be available after start of one.
- “Blotter:” daily deployment, staffing, assignment information; not disclosable – security related
- “Event log:” daily activity report. Apply 3b principles: what, where, when, who, surrounding circumstances.

Tapes Of All Kinds

- Generally disclosable, but...
- 9-1-1 requests that when fulfilled could adversely affect someone's rights are at the moment a bit muddled and we are obtaining guidance
- 9-1-1 requests should be brought to Attorney
- Vehicle video and radio tapes: set a retention and recycling policy and stick to it
- Releasable if kept and non-criminal
- Could be extraordinary charge to redact

Other Issues

- Juvenile records have separate exception: 2A:4A-60
- PD's have authority to set fees, but cannot conflict with OPRA standards for costs
- Accident reports: OK to redact DL's and other redactables, except to parties and insurers
- Sudden death: if not criminal, 3a applies.
- Grievances: specifically exempt
- Internal affairs exempt as personnel record or, possibly criminal.
- Victims rights – refers to victims and rights agencies